

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LONNIE PAHL CUMMINGS,
Plaintiff,
v.
KAMALA HARRIS,
Defendant.

Case No. [14-cv-02539-BLF](#)

**ORDER VACATING MOTION
HEARING; GRANTING MOTION TO
DISMISS BY SUPERIOR COURT**

[Re: ECF 30]

This is a civil rights action wherein *pro se* plaintiff Lonnie Pahl Cummings challenges the constitutionality of a state law requiring the posting of bail in order to challenge a traffic ticket via a special procedure known as a “trial by declaration.” On October 27, 2014, the Court dismissed Plaintiff’s original complaint with leave to amend, noting that the Complaint identified the “Defendant(s)” as “Kamala Harris, Attorney General” at the address “Santa Clara County Superior Court,” and that it was not clear who Plaintiff actually intended to sue. *See* Order Granting Mot.to Dismiss at 4, ECF 24. Plaintiff promptly filed a First Amended Complaint (“FAC”), ECF 29, and motion practice ensued.

Before the Court is the Motion to Dismiss Plaintiff’s First Amended Complaint for Declaratory and Injunctive Relief filed by the Santa Clara County Superior Court (“Superior Court”) on December 5, 2014. Superior Court Mot., ECF 30. The Court finds this matter appropriate for submission without oral argument and accordingly VACATES the April 2, 2015 hearing date on this motion. Civ. L.R. 7-1(b).

The Superior Court makes a number of arguments in support of dismissal, including that Plaintiff does not appear to be suing the Superior Court in his FAC, that his claims are implausibly pled, and that the Superior Court is both immune from suit and not able to be sued under 42


U.S.C. § 1983. *See generally* Superior Court Mot. Just as he failed to respond to the Superior Court's first motion to dismiss the original complaint, Plaintiff has also not responded to the present motion.¹ That, alone, is sufficient reason to grant the Superior Court's motion. *See San Diego Puppy, Inc. v. City of San Diego*, No. 13-CV-2783-BTM-DHB, 2014 WL 4546390, at *4 (S.D. Cal. Sept. 11, 2014) (collecting cases dismissing claims where opposing party fails to respond to moving party's arguments).

There is, however, a more obvious resolution to the present motion: Plaintiff in his FAC appears to have dropped any claims against the Superior Court. *See* Superior Court Mot. 6. Although there may be some understandable confusion caused by the identification of "Defendant(s)" in the allegations, FAC ¶ 1(b) (emphasis added), the FAC clearly identifies *only* "Kamala Harris, Attorney General, Official Capacity Only," as the named defendant in this action, *id.*; *see also id.* at pg. 1 (caption). The Court therefore construes the FAC to be asserting claims solely against Kamala Harris, and not against the Superior Court. As such, the Superior Court shall be dismissed as a defendant from this action.²

For the foregoing reasons, the Santa Clara County Superior Court's Motion to Dismiss is GRANTED, and the Superior Court is dismissed from this action.

IT IS SO ORDERED.

Dated: March 25, 2015


BETH LABSON FREEMAN
United States District Judge

¹ At the October 16, 2014 hearing on the Superior Court's first motion, Plaintiff indicated that he was not aware he was required to respond. The Court notified Plaintiff then that if he did not respond to a motion, the motion may be decided against him.

² In any event, as the Court noted in its prior order, the Superior Court is not a "person" for purposes of 42 U.S.C. § 1983 and is furthermore likely immune from suit under the Eleventh Amendment. Order Granting Mot. to Dismiss at 4, 7.